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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT LEON WATSON,

Defendant and Appellant.

E071537

(Super.Ct.No. BAF1700334)

OPINION

APPEAL from the Superior Court of Riverside County. Jorge C. Hernandez,
Judge. Affirmed.

Albert Watson, in pro. per.; and Reed Webb, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

In August 2017, pursuant to a negotiated disposition, defendant and appellant Albert Leon Watson pleaded guilty to inflicting corporal injury resulting in traumatic condition on a spouse or former spouse (Pen. Code, § 273.5; count 1)¹ and dissuading or attempting to dissuade a witness from reporting a crime to law enforcement (§ 136.1, subd. (a); count 5). In addition, defendant admitted that he had suffered a prior strike conviction (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). In return, the remaining offenses and enhancement allegations were dismissed, and defendant was sentenced to the stipulated term of 10 years in state prison with 277 days of credit for time served.

In March 2018, defendant filed a petition for writ of habeas corpus in the superior court. The trial court denied the petition. Subsequently, in September 2018, defendant filed a petition for writ of error *coram nobis*, which was denied by the trial court. Defendant appeals from the trial court's order denying his writ of error *coram nobis*. Based on our independent review of the record, we find no error and affirm the judgment.

¹ All future statutory references are to the Penal Code unless otherwise stated.

II

FACTUAL AND PROCEDURAL BACKGROUND²

On March 24, 2017, defendant willfully and unlawfully inflicted corporal injury resulting in a traumatic condition on Jane Doe. He also unlawfully and willfully dissuaded or attempted to dissuade Jane Doe from reporting the crime to law enforcement and/or from attending and giving testimony at trial. Jane Doe was either defendant's spouse or former spouse, cohabitant or former cohabitant, or the parent of defendant's child.

On May 4, 2017, a first amended felony complaint was filed charging defendant with inflicting corporal injury resulting in a traumatic condition on a spouse or former spouse or a cohabitant or former cohabitant (§ 273.5, subd. (a); count 1); making criminal threats (§ 422; count 2); assault with force likely to produce great bodily injury (§ 245, subd. (a)(4); count 3); and willfully dissuading or attempting to dissuade a witness from reporting a crime to law enforcement or from attending trial with force (§ 136.1, subd. (c)(1); count 4). The first amended complaint also alleged that defendant had suffered eight prior prison terms (§ 667.5, subd. (b)), one prior serious felony conviction (§ 667, subd. (a)), and one prior strike conviction (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)).

² The factual background is taken from the first amended felony complaint and the plea hearing.

On August 9, 2017, the People orally amended the first amended complaint to add count 5, dissuading or attempting to dissuade a witness without force (§ 136.1, subd. (a)). Pursuant to a negotiated plea agreement, defendant pleaded guilty to counts 1 and 5. He also admitted that he had suffered one prior strike conviction, in exchange for a stipulated term of 10 years in state prison and dismissal of the remaining charges and enhancement allegations.

Prior to pleading guilty, the trial court informed defendant of his plea and the consequences of pleading guilty. The court also inquired about the plea form defendant had signed and initialed, as well as, whether defendant understood the constitutional rights noted in the plea form. Defendant stated he had an opportunity to review the plea form and that he understood everything on the plea form, including his rights and waiver of his constitutional rights. According to the plea form, all promises made to defendant were included on the plea form and that defendant was not under pressure to plead guilty. In addition, the plea form shows defendant had adequate time to discuss his constitutional rights, the consequences of his plea, and any available defenses with his attorney. The plea form also indicates defendant agreed there was a factual basis for his plea. Defendant initialed line 6, which provides, “Factual Basis: I agree that I did the things that are stated in the charges that I am admitting.”

Defendant also signed the plea form asserting he understood the document and waived all the rights initialed. Defendant’s attorney joined in defendant’s plea and signed the plea form stating defendant understood the waiver of his rights, he had adequate time

to discuss his case and the potential defenses, and he understood the consequences of his plea. The court also inquired whether there was “a sufficient factual basis for the plea.” The prosecutor responded in the affirmative, and neither defendant nor his counsel objected. After directly examining defendant, the court concluded that defendant understood his constitutional rights and waived them, that defendant freely, knowingly, and voluntarily entered the plea and admission, and that there was a factual basis for the plea.

Immediately thereafter, defendant was sentenced in accordance with his plea agreement to 10 years in state prison as follows: the middle term of three years, doubled to six years due to the prior strike conviction, on count 1, plus a consecutive middle term of two years, doubled to four years due to the prior strike, on count 2. The remaining charges and enhancement allegations were dismissed. Defendant was awarded 277 days of credit for time served.

Defendant did not appeal from the judgment. However, on March 16, 2018, he filed a petition for writ of habeas corpus in the superior court, alleging the trial court’s determination of the truth of the prior strike admitted by him violated his Sixth Amendment rights under *People v. Gallardo* (2017) 4 Cal.5th 120 (*Gallardo*).

On April 3, 2018, the trial court denied the petition, finding defendant had admitted the prior strike and had “not provided any factual or legal basis to support his claim of a Sixth Amendment violation.”

On September 12, 2018, defendant filed a petition for writ of error *coram nobis* in the superior court, alleging his guilty plea was induced by the prosecutor's untrue factual assertions that the victim had made a signed complaint and that there were photographs showing injuries Jane Doe received in the alleged assault. Defendant asserted that his guilty plea was wrongfully induced by a presentation made by the deputy district attorney of "digital images of a bruised and battered victim [without indicating] when said pictures were taken." He also claimed that untrue representations were made by his trial attorney "as far as they relate to the court's jurisdiction over the subject matter, and existence of evidence of a crime to which [he] was charged." He further claimed that his Sixth Amendment right was violated under *Gallardo*, that at the time of the incident, he suffered from "certain mental illnesses," and he was never questioned by the trial court as to the actual factual basis for the charges.

On September 4, 2018, the People filed an opposition to defendant's *coram nobis* writ petition with supporting exhibits. The People asserted defendant was relitigating his guilt that had been determined on his "own pleas and admissions," and that defendant had failed to identify any mistake of fact that had it been corrected would have prevented the judgment. The People also noted to the extent defendant was alleging ineffectiveness of counsel, "the law is clear that relief is not available through *coram nobis* on the basis of such claims."

After defendant was given an opportunity to respond to the People's opposition in writing, on October 4, 2018, the trial court denied defendant's *coram nobis* writ petition.

The court also denied defendant's request for a hearing on the petition, noting defendant was not entitled to a hearing.

On October 29, 2018, defendant filed a timely notice of appeal.

On November 13, 2018, defendant filed an amended notice of appeal, specifying the appeal was from the denial of his writ of error *coram nobis*.

III

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Upon examination of the record, counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his supplemental brief, defendant alleges that (1) the complaint in this case was defective because it was neither "sworn" nor signed by a "NATURAL PERSON," but a deputy district attorney; (2) there was no factual basis for the plea; (3) there was no factual basis for his admission to the prior strike conviction in violation of *Gallardo*; (4) his due process rights were violated by the absence of the trial court transcript of the prior proceeding; (5) the trial court clerk violated the duty to supply all parties on appeal with a copy of designated items under California Rules of Court,

rule 8.123; and (6) this court should sanction the trial court clerk for violating the court's order to transmit the missing designated documents.

We find defendant's contentions lack merit. Initially, we note that the record on appeal has been augmented to include the documents that were missing from defendant's designation of the record. Furthermore, there is no evidence in the record to support defendant's claims that his due process rights were violated or that the court clerk violated the court's order or the duty to supply all parties on appeal with a copy of the record. Moreover, defendant is appealing from the denial of his writ of error *coram nobis*. Thus, as explained below, defendant's legal remedy is limited.

A petition for writ of error *coram nobis* "is an attack upon a judgment which has become final and in favor of which there are strong presumptions of regularity" (*People v. Adamson* (1949) 34 Cal.2d 320, 329-330.) The petition is a limited remedy and the moving party bears a heavy burden to show that he should obtain relief. (*People v. Kim* (2009) 45 Cal.4th 1078, 1091 (*Kim*); *People v. Ibanez* (1999) 76 Cal.App.4th 537, 548-549 (*Ibanez*).) "[A] petition for a writ of error *coram nobis* is regarded, in practical effect, as a motion to vacate a judgment [citation], and is neither a new adversary suit nor an independent action, but simply a part of the proceedings in the case to which it relates. [Citation.]" (*People v. Sica* (1953) 116 Cal.App.2d 59, 61-62.) Relief through a writ of error *coram nobis* is extraordinary relief. (*In re Reno* (2012) 55 Cal.4th 428, 453.)

However, the grounds on which a litigant may obtain relief through *coram nobis* "are narrower than on habeas corpus [citation]; the writ's purpose 'is to secure relief,

where no other remedy exists, from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court’ [citation].” (*Kim, supra*, 45 Cal.4th at p. 1091; *People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1146-1147 (*Mbaabu*).) The California Supreme Court has “emphasized the limited nature of this legal remedy.” (*Kim*, at p. 1092.)

In connection with a guilty plea, “*coram nobis* lies when a defendant has been fraudulently coerced or persuaded to plead guilty, or is deprived of the right of trial by extrinsic fraud, deceit, duress, persuasion or misrepresentation, when no statutory remedy for the wrong exists, or when the statutory remedy is inadequate.” (*In re Dorsey* (1947) 81 Cal.App.2d 584, 586.) *Coram nobis* does not lie where the defendant relies on a representation or promise by defense counsel relating to the consequences of a change of plea, unless the prosecution or the court was a party to the representation or promise. (*People v. Grgurevich* (1957) 153 Cal.App.2d 806, 811; *People v. Soriano* (1987) 194 Cal.App.3d 1470, 1477.)

“The seminal case setting forth the modern requirements for obtaining a writ of error *coram nobis* is *People v. Shipman* (1965) 62 Cal.2d 226 [*Shipman*]. There [the court] stated: ‘The writ of [error] *coram nobis* is granted only when three requirements are met. (1) Petitioner must “show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of the judgment.” [Citations.]

(2) Petitioner must also show that the “newly discovered evidence . . . [does not go] to the merits of issues tried; issues of fact, once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial.” [Citations.] This second requirement applies even though the evidence in question is not discovered until after the time for moving for a new trial has elapsed or the motion has been denied. [Citations.] (3) Petitioner “must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ. . . .” [Citation.]” (*Kim, supra*, 45 Cal.4th at pp. 1092-1093.)

“These factors set forth in *Shipman* continue to outline the modern limits of the writ.” (*Kim, supra*, 45 Cal.4th at p. 1093.) All three requirements must be met for a writ of error *coram nobis* to issue. (*Mbaabu, supra*, 213 Cal.App.4th at p. 1146.) The writ “applies where a *fact* unknown to the parties and the court existed at the time of judgment that, if known, would have prevented rendition of the judgment”; as a result, the writ lies to correct only errors of fact, and does not enable the court to correct errors of law or address constitutional claims such as ineffective assistance of counsel. (*Kim*, at pp. 1093, 1095-1096; *Ibanez, supra*, 76 Cal.App.4th at p. 545; *Mbaabu*, at p. 1147.)

In addition, the writ of error *coram nobis* “is unavailable when a litigant has some other remedy at law,” such as by appeal or a motion for a new trial, “and failed to avail himself of such remedies. [Citations.]” (*Kim, supra*, 45 Cal.4th at pp. 1093-1094.) Furthermore, the moving party in *coram nobis* must satisfy “the requirement that he show

due diligence when seeking such extraordinary relief. ‘It is well settled that a showing of diligence is prerequisite to the availability of relief by motion for *coram nobis*’ [citations], and the burden falls to defendant ‘to explain and justify the delay’ [citation].” (*Kim*, at p. 1096.) The defendant ““must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ. . . .’ [Citations.]” (*Shipman, supra*, 62 Cal.2d at p. 230.)

“[T]he allegedly new fact must have been unknown and must have been in existence at the time of the judgment. [Citation] [¶] For a newly discovered fact to qualify as the basis for the writ of error *coram nobis*, we look to the fact itself and not its legal effect. ‘It has often been held that the motion or writ is not available where a defendant voluntarily and with knowledge of the facts pleaded guilty or admitted alleged prior convictions because of ignorance or mistake as to the legal effect of those facts.’ [Citation.]” (*Kim, supra*, 45 Cal.4th at p. 1093.)

“A quick perusal of the types of situations in which the writ of error *coram nobis* has issued illustrates these limitations.” (*Kim, supra*, 45 Cal.4th at p. 1094.) “Thus, the writ has issued in these circumstances: ‘Where the defendant was insane at the time of trial and this fact was unknown to court and counsel [citations]. Where defendant was an infant and appeared by attorney without the appointment of a guardian or guardian *ad litem* [citations]. . . . Where the defendant was dead at the time judgment was rendered [citations]. Where default was entered against a defendant who had not been served with

summons and who had no notice of the proceeding [citations]. Where counsel inadvertently entered an unauthorized appearance in behalf of a defendant who had not been served with process [citation]. Where a plea of guilty was procured by extrinsic fraud [citation]. Where a plea of guilty was extorted through fear of mob violence [citations]. Where defendants and their counsel were induced by false representations to remain away from the trial under circumstances amounting to extrinsic fraud [citation]. Where by the failure of the clerk to properly file an answer the party was deprived of his defense [citation].’ [Citation.] More recently, a lower federal court granted *coram nobis* relief where, many years after the fact, a Japanese-American plaintiff convicted of a misdemeanor for failing to report to a civilian control center in preparation for internment during World War II proved the federal government had intentionally suppressed favorable evidence showing the absence of any military necessity for removing those of Japanese ancestry from the West Coast. [Citation.]” (*Id.* at pp. 1094-1095, fn. omitted.)

“By contrast, the writ of error *coram nobis* was found unavailable in the following situations: where trial counsel ‘improperly induced’ the defendant to plead guilty to render him eligible for diversion and the trial court eventually denied diversion [citation]; where the defendant pleaded guilty to having a prior felony conviction when he was eligible to have the prior reduced to a misdemeanor [citation]; where the defendant discovered new facts that would have bolstered the defense already presented at trial [citation]; where the defendant mistakenly believed his plea to second degree murder meant he would serve no more than 15 years in prison [citation]; where the defendant

claimed neither his attorney nor the court had advised him before he pleaded that his convictions would render him eligible for civil commitment under the Sexually Violent Predators Act (SVPA) [citation]; and where the defendant challenged ‘the legality of his arrest, the identity of the informant, and the failure of the court to make findings on the prior convictions’ [citation].” (*Kim, supra*, 45 Cal.4th at p. 1095.)

“‘A petition for writ of error *coram nobis* places the burden of proof to overcome the strong presumption in favor of the validity of the judgment on the petitioner. This burden requires the production of strong and convincing evidence. A mere naked allegation that a constitutional right has been invaded will not suffice. The application should make a full disclosure of the specific facts relied upon and not merely state conclusions as to the nature and effect of such facts. [Citation.]’ [Citations.]” (*Ibanez, supra*, 76 Cal.App.4th at pp. 548-549.) “The defendant has the burden of overcoming such presumption and establishing by a preponderance of the evidence ‘that he was deprived of substantial legal rights by extrinsic causes.’ [Citations.]” (*People v. Goodspeed* (1963) 223 Cal.App.2d 146, 152.)

In view of the strict requirements for relief in the form of *coram nobis*, “it will often be readily apparent from the petition and the court’s own records that a petition for *coram nobis* is without merit and should therefore be summarily denied.” (*People v. Vaughn* (1966) 243 Cal.App.2d 730, 733.) Where the moving papers do not show newly discovered facts and conflict with the court records, or when there is no admissible evidence, the petition for *coram nobis* may be summarily denied without an evidentiary

hearing. (*Shipman, supra*, 62 Cal.2d at p. 230; *People v. Williams* (1965) 238 Cal.App.2d 585, 598.) It is only when “facts have been alleged with sufficient particularity [citation] to show that there are substantial legal or factual issues on which availability of the writ turns, [that] the court must set the matter for hearing.” (*Vaughn*, at p. 733.)

We review the superior court’s ruling on the petition for the writ of error *coram nobis* under the deferential abuse of discretion standard. (*Kim supra*, 45 Cal.4th at pp. 1095-1096; *Ibanez, supra*, 76 Cal.App.4th at p. 544.)

With these standards in mind, we turn to the allegations raised in defendant’s petition. Having thoroughly reviewed the record on appeal, we find defendant has not met his burden of proof he is entitled to *coram nobis* relief. As explained above, a petition for writ of error *coram nobis* does not enable the court to correct errors of law or address constitutional claims. (*Kim, supra*, 45 Cal.4th at pp. 1093, 1095-1096.) The writ is unavailable when there is a remedy by appeal. (*Id.* at p. 1093.) In addition, the moving party must show due diligence, and explain and justify any delay in seeking such extraordinary relief. (*Id.* at p. 1096.)

A challenge to the adequacy of a trial court’s finding of a factual basis for a plea raises an error of law that is cognizable on appeal. (*People v. Palmer* (2013) 58 Cal.4th 110, 114; *People v. Holmes* (2004) 32 Cal.4th 432, 440.) Defendant was present at the plea hearing where the court found a factual basis for the plea. Neither defendant nor his counsel objected when the prosecutor indicated there was a sufficient factual basis for the

plea. Immediately after the plea hearing in August 2017, defendant could have requested a certificate of probable cause, filed an appeal from his plea, and raised the instant claim asserting the court failed to properly find a factual basis for his plea. (See, e.g., *Holmes*, at p. 438; *People v. Zuniga* (2014) 225 Cal.App.4th 1178, 1187.) He failed to use due diligence to pursue an available remedy. Furthermore, the superior court previously rejected the purported lack of factual basis for defendant's plea and admission when it denied defendant's habeas petition. Additionally, defendant stipulated to the factual basis in his plea form. In sum, defendant has not met his burden of proof to show he is entitled to relief under *coram nobis*.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV

DISPOSITION

The superior court's judgment denying defendant's petition for writ of error *coram nobis* is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.